
From: Schmidt, Lorie
Sent: Monday, April 20, 2015 9:19 PM
To: Orlin, David
Cc: Hooks, Samantha
Subject: RE: time on Thursday

If you can find some time, I'm happy to talk this week. I think the (b) (6) will only use one of the two slots he has on hold on Thursday to meet with an outside party.

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Orlin, David
Sent: Monday, April 20, 2015 5:36 PM
To: Schmidt, Lorie
Cc: Hooks, Samantha
Subject: time on Thursday

Hi Lorie,

I have a slot at 2-2:30 with you, but the program wants to discuss RFS Reset at that time, and I was going to ask for a little more time this week. I was hoping to reschedule to 1:00- 2:00 on Thursday, and give the 2:00-3:00 slot to (b) (6). I think that swap would work for (b) (6) but it looks from your schedule as though (b) (6) is trying to find a bunch of time with you on Thursday.

The items I have for Thursday could probably wait until next week—my plans was for (b) (6) to cover the incoming draft brief in (b) (6) and for (b) (6) to talk about some of the issues they identified from the ozone public comments. Can you let me know if we should cancel, stick with a half hour and cover one of those topics, or if I could actually have the 1:00-2:00 slot.

Thanks,

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

To: Orlin, David[Orlin.David@epa.gov]
From: Dubois, Roland
Sent: Thur 8/6/2015 1:24:57 PM
Subject: Fw: Shell_Motiva Comments on 2014-2016 RFS standards and 2017 Biomass-Based diesel volumes. EPA-HQ-OAR-2015-0111
[Shell_Motiva Comments EPA-HQ-OAR-2015-0111.pdf](#)

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Ex. 5 - Deliberative



Shell Oil Products US
1000 Main Street
Houston, TX, U.S.A.
713 230 5147

July 27, 2015

Mr. Christopher Grundler
Director, Office of Transportation and Air Quality
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 6401A
Washington, DC 20460
Email: Grundler.Christopher@Epa.gov

RE: Renewable Fuel Standard Program: Standards for 2014, 2015 and 2016 and Biomass-Based Diesel Volumes for 2017. 80 Fed. Reg. 33100 (June 10, 2015); EPA-HQ-OAR-2015-0111.

Dear Mr. Grundler:

Shell appreciates the opportunity to comment on the proposed 2014, 2015 and 2016 Renewable Fuel Standards and Biomass-Based Diesel Volumes for 2017. Shell is an obligated party under the Renewable Fuel Standard (RFS) program. We are also a renewable fuel producer through a joint venture, and we continue to work on the commercialization of cellulosic renewable fuels. As such, we have a keen interest in these issues. In order to preserve the RFS program long term (which of itself will provide certainty for investors in cellulosic renewable fuels), it is necessary for EPA to act to address the blendwall problem before it has significant adverse impacts on consumers and the economy. These comments represent the views of Shell Oil Products US, Shell Trading Company US, Shell Chemical LP, Deer Park Refining Limited Partnership, and Motiva Enterprises LLC. We submitted comments to the Agency previously on January 28, 2014 with regard to the 2014 RFS standard (EPA-HQ-OAR-2013-0479) and ask that you incorporate those comments by reference here.

In general, we support EPA's proposal regarding 2014, 2015 and 2016 standards, with the exception of the proposed biomass-based diesel volumes. EPA is correct to recognize that the blendwall is upon us and at this time there is no feasible scenario to meet the renewable fuel volume mandates specified by the Energy Independence and Security Act. Consequently, EPA is correct to use its waiver authority to reduce the mandates to achievable levels consistent with

the capabilities of infrastructure and vehicles. It is our view that it is better to preserve the RFS, than risk its demise through infeasible targets. Alternative measures, such as the USDA program for blender pump infrastructure need to be given time to have effect. Such an approach has more opportunity to provide a structure for more future investment certainty for cellulosic renewable fuel production. Failure to do so would likely result in limitations on the supply of gasoline and diesel fuels in the United States and severe adverse impacts on consumers and the economy, since obligated parties cannot operate in violation of the law.

EPA should act expeditiously to finalize the adjusted standards. The deadlines for issuing the 2014 and 2015 standards have long passed. Continued delay in the issuance of the standards creates uncertainty that adversely impacts the market. We urge EPA to quickly issue the adjusted standards to provide the market certainty.

Below, we discuss the blendwall, EPA's general approach toward the statute's implementation, EPA's authority to adjust the renewable fuel standards, EPA's correct decision to not attempt to deplete banked RINs when setting the standards, EPA's lack of authority to increase the stringency of the biomass-based diesel volumes until at least 2017, and the upcoming mandate reset rulemaking.

The Blendwall

As we have explained in previous comments to the Agency, the blendwall is this:

- The amount of gasoline and diesel fuel that refiners and importers can legally produce or import for U.S. consumption is limited by their ability to meet the Renewable Volume Obligation (RVOs) that are incurred by supplying such fuel.
- Refiners and importers comply with the RVOs by acquiring the required number of RINs as determined by the annual Renewable Fuel Standards and the amount of gasoline and diesel that they supply for US consumption. This is each obligated party's individual RVO.
- The number of RINs available for compliance depends on consumption of renewable fuels in the U.S. transportation system (not the production of biofuels). Consumer choice and supply infrastructure are essential factors.
- Therefore, the supply of gasoline and diesel fuel for US consumption is limited by the consumption of renewable fuels in US transportation fuels. This can be described by the following simple equation derived from the law and EPA's regulations:

$$\begin{array}{l} \text{Gasoline and diesel supplied} \\ \text{for US consumption} \end{array} = = \frac{\text{Renewable fuel consumed}}{\text{Annual RFS \% standard}}$$

- As the RFS2 mandates exceed the ability of the U.S. transportation system to consume the renewable fuel (due to vehicle and retail infrastructure compatibility issues), RINs will be in short supply, which to maintain compliance with the law, will in turn limit supplies of gasoline and diesel for U.S. consumption. Consumption of E85, E15, or biodiesel will not provide the needed RINs– the blendwall is here now. Increasing consumption of those fuels requires significant investments in blending and dispensing infrastructure.
- The RIN construct was expected to financially support ever increasing renewable fuel volumes, but:
 - RIN prices are often discussed as a means to create incentives for retailers to invest in infrastructure to offer E85 and other higher ethanol blends. While it is true, we believe, that if RIN prices stay high enough, long enough, that might cause some expansion of E85 availability by enticing retailers (97% of which are independently owned and operated) to invest in new infrastructure, it is important to keep in mind that there is a time element to this which could result in RIN shortage that limits gasoline and diesel supply and otherwise adversely affects consumers and the economy in the interim.
- RIN deficit rollover is not a solution. Whenever a deficit is carried forward, the obligated party is required to clear the deficit and fully meet the RVO in the second year. This is an unsustainable solution as the RFS mandates continue to escalate.
- Knowingly violating the Clean Air Act is not an option. The adverse impacts of the blendwall limitation will be the result of obligated parties taking action to remain in compliance with a law that becomes infeasible when mandates exceed the blendwall.

EPA correctly recognizes that the blendwall has been reached and proposes to take action to adjust the standards to attempt to put the RFS on a manageable path forward and to avoid the potentially disastrous consequences for consumers and the entire US economy. We generally support EPA's action to address this serious problem. Adjusting the standards to alleviate the blendwall problem is critical to the well-being of US consumers, the economy, and the continued existence of the RFS.

EPA Has Authority Under the Cellulosic Waiver Provision and the General Waiver Provision to Adjust the RFS Standards

EPA proposes to revise the standards using its authority under the cellulosic waiver provision and the general waiver provision. We agree that EPA has authority to adjust the advanced and general renewable fuel categories when adjusting the cellulosic category. EPA is also correct to read the cellulosic waiver provision and the general waiver provision together in a complementary way to give meaning to both. There is nothing in the law that suggests that

Congress intended one to limit the other. We agree that EPA has authority to go beyond its ability to waive the standards using the cellulosic waiver provision by relying on the general waiver provision.

The general waiver provision authorizes EPA to adjust any of the RFS standards in whole, or in part, in the event of severe economic or environmental harm or inadequate domestic supply. EPA proposes to rely on the “inadequate domestic supply” provision. As discussed below, we agree that EPA has authority to adjust the standards on the basis of inadequate domestic supply, but also believe that EPA would be fully justified relying on its authority to avoid severe economic harm as well. If EPA does not adjust the standards, the blendwall will result in severe economic harm throughout the United States.

EPA’s interpretation of the general waiver provision is entirely reasonable. Notwithstanding widespread misunderstanding of the RFS program, the law does not in fact guarantee the consumption of any particular volume of renewable fuels in any year. As EPA has previously explained, if the amount of gasoline and diesel supplied for US consumption is less than the amount EPA expected to be demanded when setting the annual RFS standards, the volumes specified in the law are not required. Rather than mandate the production of, or guarantee the use of, any particular volumes of renewable fuels, the law limits the supply of gasoline and diesel fuel for US consumption by the amount of renewable fuels consumed in US transportation fuels. This basic construct was true under the Energy Policy Act of 2005 and the RFS1 regulations. Congress ratified this construct in Energy Independence and Security Act of 2007 (EISA) and it remains true under the RFS2 regulations.

Against that background, it is entirely reasonable for Congress to provide EPA authority to adjust the standards to address the problems that would arise due to an inability to consume the volumes of renewable fuels specified in EISA. Absent an EPA adjustment of the standards using the general waiver authority, the inability to consume sufficient renewable fuels will result in an inadequate domestic supply of gasoline and diesel fuel. It is inconceivable that Congress would not authorize EPA to make adjustments to the standards to avoid the potentially disastrous implications of limiting gasoline and diesel supplies. EPA’s interpretation is entirely reasonable and consistent with the structure of the law.

EPA’s overall philosophy of the RFS – recognizing that cellulosic and advanced should be favored over general renewable -- is entirely consistent with the structure of the law. The structure of the law is that cellulosic displaces advanced, which in turn displaces general renewable fuel. This results in the greatest greenhouse gas reduction benefits achievable, particularly since all, or practically all, general renewable fuel is entirely exempt from EISA’s greenhouse gas emission reduction requirements. It is clearly consistent with the statute’s goals to increase the cellulosic and advanced mandate pools while reducing the general renewable category.

EPA Has No Authority to Increase the Stringency of the Biomass-Based Diesel Standard Before 2017

In the previous proposal for the 2014 RFS standards, EPA correctly proposed to maintain the biomass-based diesel volume at 1.28 billion gallons for 2014 and 2015. Now, however, EPA has proposed to increase the biomass-based diesel mandates for 2014, 2015, 2016 and 2017. EPA has no authority to increase the biomass-based diesel volumes before at least 2017 at this point. The provision limiting EPA's authority to increase the stringency of the biomass-based diesel standard is clear. EPA must follow the clear intent of Congress:

The Administrator shall promulgate rules establishing the applicable volumes under this clause no later than 14 months before the first year for which such applicable volume will apply.

The 14 month lead time requirement serves an important purpose. This provision applies to years where the volumes are not listed in the statute and therefore neither producers nor anyone else in the supply chain knows what the requirement will be. The purpose of the 14 month lead time requirement is to provide all parties in the supply chain the opportunity to plan their compliance and make investments, if necessary.

We note also that it is inappropriate for EPA to think that there is no harm to obligated parties because the overall number of RINs from biodiesel consumption in 2014 exceeded 1.28 billion gallons, or that the biodiesel consumption in 2015 and 2016 may exceed 1.28 billion gallons. The RFS puts obligations on specific obligated parties, not the industry as a whole. Thus, although there apparently will be excess biodiesel consumed in 2014-2016 versus the 1.28 billion gallon mandate, to meet the advanced and general renewable mandates, this does not mean that all obligated parties have sufficient biomass-based diesel RINs to meet the increased biomass-based diesel standards. Obligated parties that have justifiably relied on the law may be harmed by EPA's decision to increase the biomass-based diesel mandates for 2014-2016.

EPA is Correct to not Attempt to Drain the RIN Bank

EPA correctly determined that it would not be appropriate to attempt to set the standards for 2014-2016 such that obligated parties would have to drain their banked RINs to maintain compliance. As EPA explained in the preamble, maintaining an adequate RIN bank provides important flexibility to maintain compliance in the event of unforeseen events.

The RFS Reset

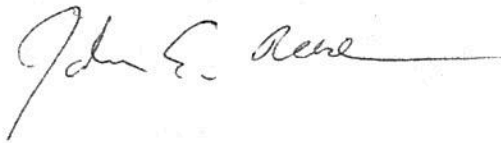
Uncertainty in the targets for cellulosic biofuels post 2022 will have an adverse impact on the ability of project sponsors to raise funding. The upcoming reset of the RFS mandates provides an opportunity to increase certainty to 2022 and beyond. Upon waiving any particular RFS mandate category by 50 percent in any single year or 20 percent in any two consecutive years,

EPA is required to conduct a rulemaking to adjust the overall schedule of the RFS mandates through 2022. EPA tripped the 50% trigger for the cellulosic category in 2010. Now, if EPA finalizes the volumes as proposed, the 20% trigger will be tripped for both the advanced and general renewable categories. This opens the pathway to reset all of the mandate volumes. EPA should move forward with this rulemaking expeditiously to provide certainty for investors in cellulosic biofuels by setting the cellulosic volumes through 2022 and beyond at realistically achievable levels, while adjusting the advanced and general renewable categories in such a way that the greenhouse gas emission benefits of the program are maximized while at the same time ensuring that the overall mandates are consistent with the capabilities of infrastructure and vehicles. We look forward to working with the Agency on the reset rulemaking.

* * *

We appreciate this opportunity to comment on EPA's proposed 2014-2016 Renewable Fuel Standards and 2017 Biomass-Based Diesel Volumes. If you should have any questions concerning these comments, please feel free to contact me at 713.230.5147 or John.Reese@Shell.com.

Sincerely,

A handwritten signature in black ink, reading "John E. Reese". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

John E. Reese
Downstream Policy & Advocacy Mgr., Americas

Cc:

a-and-r-docket@epa.gov (EPA Docket Number: EPA-HQ-OAR-2015-0111)

Argyropoulos.Paul@epa.gov

Machiele.paul@Epa.gov

Korotney.david@Epa.gov

Macallister.julia@epa.gov